

IN THE SUPREME COURT OF THE STATE OF NEVADA

FULCRUM ENTERPRISES, LLC, A  
NEVADA LIMITED LIABILITY  
COMPANY,  
Appellant,  
vs.  
MTGLQ INVESTORS, LP, A FOREIGN  
CORPORATION; AND CAL-WESTERN  
RECONVEYANCE CORPORATION, A  
FOREIGN CORPORATION,  
Respondents.

No. 68732

FILED

MAR 17 2017

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY *[Signature]*  
DEPUTY CLERK

*ORDER VACATING AND REMANDING*

This is an appeal from a district court order, certified as final under NRCPC 54(b), granting a motion to dismiss in a quiet title action. Eighth Judicial District Court, Clark County; Kathleen E. Delaney, Judge.

The district court granted respondents' motion to dismiss, concluding that the HOA's foreclosure of its lien did not extinguish the deed of trust because NRS Chapter 116's statutory scheme authorizing the foreclosure violated the due process clauses of the United States and Nevada Constitutions. This court rejected a similar argument in *Saticoy Bay LLC Series 350 Durango 104 v. Wells Fargo Home Mortgage*, 133 Nev., Adv. Op. 5, 388 P.3d 970 (2017), because there is no state action, which requires reversal of the district court's summary judgment order.<sup>1</sup>

<sup>1</sup>In this case, there is no evidence in the record to suggest that respondents did not actually receive the notice of default and notice of sale, and appellant maintains, citing the deed's recitals and proofs of mailing that, in fact, respondents did receive actual notice. This, too,

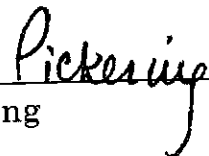
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Thus, the district court's ruling was based on an erroneous interpretation of the controlling law and dismissal of appellant's complaint was improper. The district court did not address the parties' remaining arguments, and we decline to do so in the first instance. Accordingly, we

ORDER the judgment of the district court VACATED AND REMAND this matter to the district court for proceedings consistent with this order.

  
\_\_\_\_\_, J.  
Douglas

  
\_\_\_\_\_, J.  
Gibbons

  
\_\_\_\_\_, J.  
Pickering

cc: Hon. Kathleen E. Delaney, District Judge  
Bogges & Harker  
Houser & Allison, APC  
Eighth District Court Clerk

\_\_\_\_\_  
*...continued*

requires reversal of summary judgment in respondents' favor. See *SFR Investments Pool 1, LLC v. U.S. Bank, N.A.*, 130 Nev., Adv. Op. 75, 334 P.3d 408, 418 (2014) (indicating that NRS 116.31168 (2013) incorporates NRS 107.090 (2013), which requires the notices to be sent to a deed of trust beneficiary); *Bourne Valley Court Trust v. Wells Fargo Bank, NA*, 832 F.3d 1154, 1163-64 (9th Cir. 2016) (Wallace, J., dissenting) (to similar effect).